

CHAPTER NO. 893

HOUSE BILL NO. 3118

By Representative Fowlkes

Substituted for: Senate Bill No. 3034

By Senator Fowler

AN ACT to amend Tennessee Code Annotated, Title 30; Title 31; Title 32; Title 34; Title 35; Title 37 and Title 67, relative to probate, trusts, estates and related inheritance matters.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-50-124(a), is amended by deleting the following language in its entirety:

Due to the potential conflict of interest that exists between a trustee who is a beneficiary and other beneficiaries of the trust, unless the terms of a trust refer specifically to this subsection and provide expressly to the contrary, any power conferred upon a trustee (other than the settlor of a revocable or amendable trust or a decedent's or settlor's spouse who is the trustee of a testamentary or an inter vivos trust for which a marital deduction has been allowed):

and by substituting instead the following:

Due to the potential conflict of interest that exists between a trustee who is a beneficiary and other beneficiaries of the trust, any power conferred upon a trustee, other than the settlor of a revocable or amendable trust:

SECTION 2. Tennessee Code Annotated, Section 35-50-124(a)(4), is amended by inserting the following language after the language "If there is no trustee qualified to exercise such a power" and before the language ", any party in interest,":

and the document creating the trust does not include authority for the appointment of an independent trustee

SECTION 3. Tennessee Code Annotated, Section 35-50-124, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) This section applies to any trust unless application of the statute would cause the loss of a marital or charitable deduction or loss of generation skipping transfer tax exemption or the terms of the trust either:

(1) Refer specifically to this section and provide expressly to the contrary;

(2) Clearly indicate an intent by the settlor of the trust or testator of a will to grant the trustee who is also a beneficiary the power in question to accomplish a particular beneficial tax result; or

(3) Contain language similarly limiting the powers of a trustee who is also a beneficiary.

SECTION 4. Tennessee Code Annotated, Section 35-50-124, is amended by deleting subsection (d) in its entirety.

SECTION 5. Tennessee Code Annotated, Section 35-50-125(a), is amended by deleting the language "which is not contrary to the clear intent of the trust between" and by substituting instead the language "which is not contrary to the clear intent of the trust creator between".

SECTION 6. Tennessee Code Annotated, Section 35-50-125, is amended as follows:

(1) In subsection (a) by inserting the word "creator" between the word "trust" and the word "between".

(2) In subsection (c) by deleting the subsection in its entirety and by substituting instead the following language:

(c) This section shall not apply to an agreement that accelerates or postpones the termination of the trust, in whole or in part. In addition, if any party to the agreement is deemed by Internal Revenue Code §2041 or §2514 to have a general power of appointment, then this section shall not apply to an agreement that:

(1) results in the trust not qualifying for the marital or charitable deduction if the trust would qualify but for the agreement, or

(2) results in the trust being subject to the generation skipping transfer tax if the trust would not be subject to the generation skipping transfer tax but for the agreement, or

(3) results in an overall increase in estate, inheritance, gift or generation skipping transfer taxes.

(3) In subsection (d) by deleting the word "instrument" at the end of the subsection and by substituting instead the word "creator".

(4) In subsection (e) by inserting the word "creator" after the word "trust" and before the period at the end of the subsection.

SECTION 7. Tennessee Code Annotated, Section 35-50-125(e), is amended by inserting the word "creator" after the word "trust" and before the punctuation ".".

SECTION 8. Tennessee Code Annotated, Title 35, Chapter 50, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 35-50-1___. (a) The trustee may present a certification of trust to any person to evidence the existence and validity of the trust in the manner set forth in this section.

(b) The certification of trust shall be in the form of a sworn declaration, signed by the trustee or trustees having signatory authority as identified in subdivision (5) of this subsection and shall contain the following:

(1) An affirmation of the current existence of the trust and the date on which the trust came into existence;

(2) The identity of the trustor or trustors, the currently acting trustee or trustees, and the named successor trustee or trustees of the trust or a statement that no successor is named;

(3) The administrative and/or managerial powers of the trustee;

(4) The revocability or irrevocability of the trust and the identity of any person holding any power to revoke the trust;

(5) When there are multiple trustees or multiple successor trustees, the signature authority of the trustees or successor trustees indicating whether all or less than all of the currently acting trustees are required to sign in order to exercise various powers of the trustee;

(6) Where there are successor trustees designated, a statement detailing the conditions for their succession or a statement that a third party may rely on the authority of one or more successors without proof of their succession;

(7) The trust identification number, whether a social security number or an employer identification number;

(8) The manner in which trust assets should properly be titled; and

(9) A statement that to the best of the trustee's knowledge, the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect.

(c) The certification of trust shall not be required to contain the dispositive provisions of the trust which set forth the distribution of the trust estate.

(d) The trustee offering the certification of trust may provide copies of all or any part of the trust document and amendments, if any. Nothing in this section is intended to require or imply an obligation to provide the dispositive provisions of the trust or a copy of the entire trust document and amendments.

(e) A person who acts in reliance on a certification of trust without actual knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification of trust. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the trust certification. Nothing contained herein shall limit the rights of the beneficiaries of the trust against the trustee. Any person relying on the certification of trust shall be indemnified from the assets of the trust to the extent of the share of the trust attributable to the beneficiary or beneficiaries bringing any action against the person for any costs, damage, attorney fees or other expenses incurred in defending any action against the person arising from the transaction to which a certification of trust related.

(f) A person's failure to request a certification of trust does not affect the protections provided that person by this section. No inference that the person has not acted in good faith or that the person was negligent may be drawn from the failure of that person to request a certification of trust. Nothing in this section is intended to create an implication that a person is liable for acting in reliance on a certification of trust under circumstances where the requirements of this section are not satisfied.

(g) Nothing in this section shall be construed to require a third party, when presented with a trust certificate, to enter into a contract with a trustee relating to trust assets or obligations, or to preclude a third party from demanding as a pre-condition to any contract that the trustee provide additional information in order to clarify any ambiguities or inconsistencies in the trust certificate.


SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 31, 2000


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 14th day of June 2000


DON SUNDQUIST, GOVERNOR